

1944 Supplement  
To  
**Mason's Minnesota Statutes, 1927**  
and  
**Mason's 1940 Supplement**

Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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for a price and on terms agreeable to defendant, and defendant signed and delivered to plaintiff an earnest money contract of sale, it was error to strike evidence tending to show that contract of sale was signed and delivered upon condition that it should not become a contract unless and until effective consent of daughter of defendant was procured. *Gustafson v. Elmgren*, 211M 82, 300NW203. See Dun. Dig. 1140.

Where cause was predicated upon claim that defendant "fraudulently conspired to defraud" plaintiff of his broker's commission in a real estate transaction, a tort, and under the evidence there appeared to be no issue to decide other than whether or not plaintiff was procuring cause of sale, and also whether or not he was employed by one of the defendants as his agent, verdict was properly directed for defendant. *Tapper v. Pflam*, 212M295, 3NW(2d)500. See Dun. Dig. 1161, 7674.

## CHAPTER 64

### Plats

#### 8236. Platting of land—Donations.

An estoppel against a city arises where there has been a long-continued nonuser by city of a dedicated street and where private parties, in good faith and in belief that city's use has been abandoned, have made valuable and permanent improvements without objection from city, with its knowledge and encouraged by making of permanent improvements by issuing building permits to those in possession, so that to reclaim land without compensation will result in great damage to those in possession. *City of Rochester v. North Side Corp.*, 211M276, 1NW(2d)361. See Dun. Dig. 6620, 6620a.

Continuous and open use for more than 15 years indicate an acceptance by public of a dedication of an alleyway. *Dickinson v. Ruble*, 211M373, 1NW(2d)373. See Dun. Dig. 2647.

A town is required to install one substantial culvert for an abutting owner, where by reason of grading or regrading such culvert is rendered necessary for a suitable approach, and it is immaterial that county accepts a plat of land providing that all original construction of roads and drainage should be done by owners of respective lots in plat. *Op. Atty. Gen.*, (377a-3), Oct. 14, 1939.

#### 8237. Survey and plat—Monument—Rivers, etc.

Practical location of a boundary line can be established only in one of three ways: acquiescence for sufficient length of time to bar right of entry under statute of limitations; express agreement between parties claiming land on both sides and acquiescence therein afterwards; or party whose rights are to be barred must, with knowledge of true line, have silently looked on while other party encroached upon it, and subjected himself to expense which he would not have done had line been in dispute. *Dunkel v. Roth*, 211M194, 300NW610. See Dun. Dig. 1083.

Since effect of a practical location of a boundary line is to divest owner of his property, evidence establishing such location should be clear, positive, and unequivocal. *Id.*

#### 8238. Dedication—Certification—Approval—Etc.

Intention to create exception from vendor's general undertaking to convey free from incumbrances cannot be presumed from fact that there is a dedication then of record, since, as against vendor, purchaser is entitled to rely upon vendor's general undertaking and is not bound to take notice of the recordation. *Miller v. S.*, (AppDC), 113F(2d)748.

A dedicatory cannot attach any conditions or limitations inconsistent with legal character of dedication, or which are against public policy, or which take property designated from control of public authorities, and dedication will take effect regardless of such conditions which will be construed void. *Kuehn v. V.*, 207M518, 292NW187. See Dun. Dig. 2626.

An individual dedicating a road to a township could not withhold from municipality sovereign power incident to public use of road, and could not reserve exclusive right to maintain a water supply system along the road. *Id.* See Dun. Dig. 2626.

A dedication of a street to the use of the public will be liberally construed and will not be limited to the particular activity for which the street was used at the time of the dedication. *Krebs*, 213M344, 6NW(2d)803. See Dun. Dig. 2626.

An owner of a platted area who installed improvements such as water and sewer system at his own expense and, to induce purchase of lots in the area, represented to buyers that no assessments therefor would be imposed because the purchase price of the lots included payment of the improvements, cannot thereafter claim full ownership of the improvements, and, to the extent of the payments made by lot buyers, improvements became property of the community, and its rights may be asserted by the local unit of government. *Country Club District Service Co. v. Village of Edina*, 214M26, 8NW(2d)321. See Dun. Dig. 2652.

Fact that county approved plat does not make it liable for maintenance of dedicated highways. *Op. Atty. Gen.* (377b-10h), July 29, 1940.

Lands dedicated to municipality as a park by a plat cannot be leased to a township for use as a site for a warehouse for road and other machinery, nor can it be sold. *Op. Atty. Gen.*, (469a-9), June 9, 1941.

In subdividing trust fund lands into small parcels or lots, Commissioner of Conservation has authority to dedicate streets and alleys to public. *Op. Atty. Gen.*, (700d-26), July 25, 1941.

A plat indicating a street as an outer boundary indicated a dedication to the public of that street. *Op. Atty. Gen.* (396C-4), Aug. 29, 1941.

Where land was forfeited to state for nonpayment of taxes and was sold by state as tax forfeited land and a state deed issued, and purchaser from state secured a quitclaim deed from fee owner before forfeiture, which deed was filed, there is a merger in the purchaser of title obtained by state and title of owner before forfeiture, and if former owner had good title, new owner is now "owner" within meaning of this section, and holds title free from all tax liens except such as may have attached for taxes levied after his purchase of land from state. *Op. Atty. Gen.* (18D), Mar. 18, 1942.

Town is under no duty to improve and maintain streets in platted areas outside incorporated village or city until they have been accepted by town authority. *Op. Atty. Gen.* (377b-10h), July 29, 1942.

#### 8239. Certain plats corrected and legalized.

There is no statute providing specifically for correction of errors in plats made under Mason's St. 1927, §2219, and auditor may insist upon owner filing a correct and proper plat. *Op. Atty. Gen.*, (18d), Apr. 22, 1941.

#### 8239-6. Correction of errors in recorded plats.

Laws 1943, c. 261, provides that where the plat of any village or city is incorrect in the description of property, the village or city council may within 60 days after the passage of this act file a correct plat.

#### 8244. Notice by publication and service upon mayor, village president; etc.

Proceedings for vacation of any street or alley in any plat validated when such proceedings are in all respects properly taken and conducted, except that posted notice was not given. Not applicable to pending proceedings. *Act Mar. 6, 1941, c. 46.*

Where county condemning land entered into settlement agreement under which it paid cash and agreed to vacate another street abutting on property and give landowner 20 feet thereof, and landowner went into possession of strip of land, contention of land owner that he was rightfully in possession under claim of title and that no cause of action accrued against county in his favor for breach of its contract to vacate until his possession was disturbed by township authorities was without merit, since he did not acquire any title from county as it had no title to convey, and county could not even vacate street. *Parsons v. T.*, 209M129, 295NW907. See Dun. Dig. 8467.

In proceeding to vacate a street in a township giving access to a lake, question for consideration is whether street is useless, not whether some other street is more useful, for the purpose for which it was laid out, and it is not enough to show that street is not presently used. *Krebs*, 213M344, 6NW(2d)803. See Dun. Dig. 6623(a).

Before a street can be vacated it must appear that no public interest will be served by continuing it and that vacation thereof will be beneficial to the public interests. *Id.*

Courts will be careful to preserve the rights of the public in a proceeding under this section to vacate a street. *Id.*

Proceedings for vacation of street and alley constituting part of a plat in a township should be under this section and not by petition before town board. *Op. Atty. Gen.* (377A-15), Oct. 3, 1941.

Gun Club owning lots in platted part of incorporated village, in order to remove lots from village to avoid heavy taxes, should have plat vacated insofar as it covers land in question, and then apply for detachment upon petition and special election of voters. *Op. Atty. Gen.* (484E-2), Mar. 9, 1942.

Procedures which may be taken where city sold tract of land to a can company, part of which is acreage and part platted, and effect upon classification for taxation and vacation of street, stated. *Op. Atty. Gen.* (18D), Mar. 26, 1942.

Statute providing for vacation proceedings in district court is applicable to plats and streets in villages op-

erating under the 1885 law. Op. Atty. Gen. (396g-16), Apr. 1, 1942.

Decision upon a petition for vacation of a street involves the exercise of discretion. Op. Atty. Gen. (396g-16), Apr. 7, 1942.

In vacation of street in the city of Brainerd, the city charter provides the methods rather than this section. Op. Atty. Gen. (396c-18), June 17, 1943.

Brainerd City Charter § 84, permitting city council to vacate a street by two-thirds vote of the council, is valid. Op. Atty. Gen. (396c-18), June 23, 1943.

#### 8246. To what plats applicable.

A plat of irregularly shaped land made under direction of county auditor by county surveyor for taxation purposes does not have to be approved by city council of West St. Paul or by the city planning committee. Op. Atty. Gen. (18d), Jan. 18, 1943.

**8246-14. Cities may plat land.**—The governing body of any city of the first class now or hereafter having over 450,000 inhabitants may subdivide and plat any land owned by it within said city. (Act Apr. 9, 1943, c. 351, § 1.)

**8246-15. Lands to be surveyed and platted.**—When such governing body decides to subdivide any

such land it may cause the same to be surveyed and platted. All plats shall be made in triplicate and, before filing, approved by the governing body, which approval shall be certified by the city clerk, and the mayor and the city clerk shall execute the dedication on one thereof, which shall be filed in the office of the register of deeds. The city clerk shall certify the other two copies thereof. One certified copy thereof shall be filed in the office of the register of deeds and the other certified copy in the office of the city engineer. (Act Apr. 9, 1943, c. 351, § 2.)

**8246-16. Present statutes to apply.**—The statutes relating to plats, including the provisions for dedication, surveyor's certification, and filing, shall be followed so far as applicable; and, where any such city is governed by a charter the provisions of such charter prescribing the procedure with request to the preparation and approval of plats shall be followed; and the duty of the city, as to the dedicated portions of the property platted, is limited by its charter. (Act Apr. 9, 1943, c. 351, § 3.)

## CHAPTER 65

### Registration of Title

#### REGISTRATION

##### 8248. Registered land—Adverse possession.

A mechanic's lien, in proper form, filed with registrar of titles, attaches to land as of commencement of improvements, the same as a lien filed in office of register of deeds for improvement upon land not registered under Torrens Act. *Armstrong v. L.*, 209M373, 296NW405. See Dun. Dig. 6062.

It is the duty of registrar to receive and register a deed mentioning contract for deed in covenant against encumbrances, but outstanding unregistered contract for deed would derive no validity from fact that it was referred to in deed of conveyance, absent possession of property by vendee. Op. Atty. Gen. (374), June 27, 1942.

**8249. Application—Who may make.**—An application for registration may be made by any of the following persons:

First—The person or persons who singly or collectively own the land. Tenants in common shall join in the application.

Second—The person or persons who singly or collectively have the power of disposing of the land.

Third—Infants and other persons under disability, by their guardian duly appointed by the proper probate court in this state.

Fourth—A corporation, by its proper officer, or by an agent duly authorized by the board of directors.

Fifth—Any executor or administrator duly appointed by the proper probate court in this state.

Sixth—A municipal corporation, by its mayor and city clerk, in the case of a city, after a resolution duly passed by its common council so directing, and by the county auditor and chairman of the county board, in the case of a county, after a resolution passed by its county board so directing.

Seventh—Any person may make application when for at least 15 years the land has been in the adverse possession of the applicant or those through whom he claims title.

Eighth—The State of Minnesota, by the county auditor and chairman of the county board of the county in which the land is located, at the direction of the county board of such county, in the case of lands forfeited to the State for taxes, and held by it in trust for its taxing districts, or otherwise.

This provision is in addition to all other laws by which the State may register the title to land. (As amended Act Apr. 22, 1941, c. 378, § 1.)

##### 8250. Titles which may be registered.

Statutes requiring that any person asserting a claim to land adversely to the state, or its successor in interest, deposit taxes in court is mandatory and is applicable

in proceeding to register title to land. *Bonley v. R.*, 213M 214, 6NW(2d)245. See Dun. Dig. 8355b.

##### 8251. Application, how signed and verified.

Act of notary in stamping his name and title and sealing instrument, but failing to sign his name to verification, was a mere irregularity not affecting jurisdiction of court. *Dean v. R.*, 208M38, 292NW765. See Dun. Dig. 8356.

**8254. May include several pieces.**—Any number of adjoining tracts of land in the same county and owned by the same person and in the same right, or any number of tracts of land in the same county having the same chain of title, and belonging to the same person, may be included in one application. When approved by the Examiner of Titles and ordered by the District Court on petition of the applicant or applicants, non-adjoining tracts of land owned by the same person or persons in the same right having different chains of title may be included in one application. (As amended Act Apr. 22, 1941, c. 378, § 2.)

##### 8259. References to examiners—Powers—Reports.

Deed given after applying for registration but before entry of decree would not convey a marketable title. Op. Atty. Gen. (374j), Nov. 13, 1942.

##### 8261. Order for summons—Parties defendant.

A grantee in an unrecorded deed allowing land to be assessed in name of grantor and delinquent taxes thereon to go to judgment and sale, and who leased land to a party who was made a party to registration proceedings, lease not being recorded, cannot complain that applicant for registration and his attorney failed to use diligence in discovering that he held a deed to the property. *Application of Rees*, 211M103, 300NW396. See Dun. Dig. 8360.

##### 8262. Form of summons—Service.

Judgment roll held to show that all known persons and persons in possession were duly served and that proper notice of publication was duly given. *Dean v. R.*, 208M38, 292NW765. See Dun. Dig. 8361a.

##### 8266. Trial—Reference.

In proceeding to register title to real estate, claimed by applicant and her mother, evidence held to sustain finding that following alleged delivery of deed from mother to daughter taxes were paid with funds belonging to applicant. *Cloutier v. C.*, 208M453, 294NW457. See Dun. Dig. 8356.

Where referee filed a report of facts recommending a 10-day stay for applicant to file objections to entry of any order based on report, and caused a copy to be served upon applicant's counsel, and no objections were filed, court could enter a decree dismissing the application without further notice to applicant. *Perch v. H.*, 209M124, 295NW504. See Dun. Dig. 8361a.

##### 8267. Dismissal.

Application for registration having been predicated upon effective exercise of option to purchase land, and referee having found as a fact that there was no exercise